

CHAPTER 13 - Project-Related Approvals, Agreements and Permits

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This chapter discusses project development workflow tasks that are required for certain project categories and types. Most of these tasks occur some time between Milestone 000 and 200; however, some of these tasks may occur late in the project design phase. For details on these tasks, see the *Project Development Workflow Tasks Manual*.

ARTICLE 1 - General

General

Entities other than Caltrans have vested interests in transportation projects, which they protect by requiring mitigation of project effects, or by requiring various approvals, permits or agreements. Negotiations with other agencies to allow a project to proceed to construction take place during many phases of a project's development: during engineering and environmental studies, during the project approval process, and during project design. Negotiations usually reach closure with an approval, agreement or permit at the same time as project approval, or shortly thereafter.

References

This chapter provides the Project Engineer (PE) or Project Manager (PM) with an overview of the most significant of these actions. The following chapters and sections of this manual provide greater detail than will be found in this chapter:

- Environmentally related actions -- Chapter 2, Section 7
- Cooperative agreements -- Chapter 16
- Route adoptions -- Chapter 23
- Freeway agreements -- Chapter 24
- Relinquishments -- Chapter 25
- Disposal of rights of way -- Chapter 26
- New public road connections to freeways and expressways -- Chapter 27
- Resolutions of Necessity for Condemnation -- Chapter 28

ARTICLE 2 - Permits and Approvals

State and Local Agency Involvement

Transportation projects often need permits and approvals to allow construction and eventual opening to the public. To aid in determining which state and local agency permits and other approvals may be required for a specific project, the following questions should be answered and Figures 1, 2 and 3 consulted.

- Where is the project located?
- What resources are affected by the project?
- What specific activities does the project involve?

FIGURE 1 - State and Local Agency Involvement Based on Project Location*

If the project is located within "Geographic Area", then:		
Geographic Area	Agency Involved	Permit
From 4.8 km offshore to 915 m inland	Coastal Commission or City/County (if authorized)	Coastal Development Permit
San Francisco, San Pablo , and Suisun Bays from highwater to 30 m inland	San Francisco Bay Conservation and Development Commission (BCDC)	Development Permit
Lake Tahoe Watershed	Tahoe Regional Planning Agency (TRPA)	Project Permit
Floodways in the Central Valley	Reclamation Board	Encroachment Permit

* Note that this Figure is not intended to be all inclusive.

FIGURE 2 - State and Local Agency Involvement Based on Resource Affected by Project*

If the project affects "Resource", then:		
Resource	Agency Involved	Permit/Approval
Air	Air Pollution Control/ Air Quality Management District	Authority to Construct and Permit to Operate for activities emitting stationary source pollutants to the atmosphere
Fish and Wildlife Habitat	Department of Fish and Game	Stream and Lake Alteration Agreement for activities in lakes, streams and channels and crossings
Water	State Lands Commission	Land Use Lease (for encroachments, crossings on tidelands and submerged lands, etc.)
	State Water Resources Control Board; Regional Water Quality Control Board	National Pollutant Discharge Elimination System Permit for stormwater discharges to surface water
		Waste Discharge Requirements for non-storm discharges to surface water or groundwater to the waters of the state
	Department of Health Services, Division of Drinking Water and Environmental Management; or Local Health Office	Permit to Operate a Public Water System

* Note that this Figure is not intended to be all inclusive.

FIGURE 3 - State and Local Agency Involvement Based on Project Activities*

If the project involves "Activity", then:		
Activity	Agency	Permit/Approval
Commercial, Industrial, Residential development	Local Agency (County/City)	Land Use, General Plans, Specific Plan, Conditional Use or Subdivision
Conversion of timberland to non-forest uses through timber operations and immediate TPZ rezoning	California Department of Forestry and Fire Protection	Timberland Conversion Permit
Power transmission lines, Pipelines and Railroad crossings	Public Utilities Commission	Review of Plans and Approval
Solid Waste Disposal	California Integrated Waste Management Board	Disposal Requirements
Sewage Disposal	County Health Department	Disposal Requirements
Waste Discharge	State Water Resources Control Board; Regional Water Quality Control Board	Discharge Requirements
Storing, treating or disposing of Hazardous waste	Department of Health Services, Toxic Substances Control Program	Hazardous Waste Facilities Permit
	State Water Resources Control Board; Regional Water Quality Control Board; Local Agency	Hazardous Waste Discharge Requirements; Underground Storage of Hazardous Substances Permit
Right of Way across state park land	Department of Parks and Recreation	Right of Way Permit, License, Easement, Joint Agreement or Lease
Encroachment on or across a local street or highway	Local Agency (County/City)	Encroachment Permit
Encroachment on 100-year Floodplain, intermittent streams and desert washes	Department of Fish and Game	Lake/Streambed Alteration Agreement
Encroachment on or across Cove, Bay or Inlet	Department of Boating and Waterways	Review of Plans
All activities involving dams or reservoirs	Department of Water Resources, Division of Safety of Dams	Approval of Plans

* Note that this Figure is not intended to be all inclusive.

FIGURE 3 - State and Local Agency Involvement Based on Project Activities* (continued)

If the project involves "Activity", then:		
Activity	Agency	Permit/Approval
Dredging	Department of Fish and Game	Standard or Special Suction Dredging Permit
	State Lands Commission	Dredging Permit
Surface Mining (Material borrow sites, etc.)	Local Agency (County/City)	Surface Mining and Reclamation Act (SMARA) Permit
Burning	Air Pollution Control District; California Department of Forestry and Fire Protection; Local Fire Control Agency	Burn Permit
Grading	Local Agency (County/City)	Grading Permit
Entering Private Property - To Gather Information	Caltrans District Right of Way Branch	Property Owner Right of Entry Approval
For Temporary Use	Caltrans District Right of Way Branch	Property Owner Approval for Temporary Encroachment
Entering Surface Waters To Gather Information or Construct Project	RWQCB	Water Quality Certification or Waiver

* Note that this Figure is not intended to be all inclusive.

Federal Involvement

In addition to the permits and approvals that may be required by state and local agencies and others, various federal agencies may also require permits and approvals. Federal agencies have approval or permit authority over activities on federal lands, and over certain resources (i.e., air and water quality, wildlife, navigable waters, etc.) when federal actions are undertaken. Federal laws, regulations and executive orders may have a bearing on a specific transportation project and may require approvals, permits or communication with federal agencies other than FHWA. See Chapter 2, Section 7, Figure 5, to determine which federal agencies may need to be involved due to the location, resources which are affected, or the activities that are involved in the project.

CE Projects

The environmental requirements of the various Federal laws, regulations and executive orders apply to categorically excluded (CE) projects as well as to projects requiring an environmental document. When an environmental document is prepared, these requirements are fulfilled as part of the environmental document preparation. When a CE is prepared, these requirements must not be overlooked. Federal environmental laws, regulations and executive orders are described in the EH.

Historic Properties and Wetlands

Earlier than normal public involvement may be required on projects, including CE projects, that require a federal action (funding, permits, etc.) and potentially effect historic properties or involve wetlands. Where properties eligible for the National Register of Historic Places are present or potentially present, a public mailing inviting written comments is required. Similarly, for projects involving wetlands, an opportunity for early public involvement must be provided by publishing a notice in the local newspaper inviting written comments. Refer to the EH for the public notice requirements relating to potential historic properties and wetlands.

References

To determine applicable permits and approvals required for a specific project, the *Environmental Handbook* (EH) should be consulted for details. The *California Permit Handbook* published by the California Trade and Commerce Agency, Office of Permit Assistance, can provide additional guidance.

See Chapter 2, Section 7, Figure 5, to determine which federal agencies may need to be involved. Environmentally related federal laws and regulations are described more fully in Chapter 1 of the EH. Refer to EH Section 2-4 for a summation of the documentation and processing requirements for those laws and regulations that most frequently apply. EH Section 2-4.2 and EH Section 2-4.3 relate the public notice requirements for CE projects that involve potential historic properties and wetlands, respectively.

ARTICLE 3 - Cooperative and Similar Agreements

Purpose

Some projects are financed jointly by Caltrans and other local or state governmental agencies or private entities. A local or state entity responsible for water delivery or flood control or stormwater drainage may desire to include some of that work with a related highway project. A local agency may desire work on local streets and roads adjoining a state highway project, over and above what is needed for the project; or to provide additional landscaping on a state highway; or to install a traffic signal which involves legs that are local streets. A local agency may propose to totally or partially fund a state highway improvement. A developer may desire to make some improvements to

accommodate a development adjacent to the state highway. Caltrans must enter into agreements that provide for such cooperation on a project.

Cooperative Agreements

Cooperative Agreements are used with local agencies to outline the responsibilities and obligations of the parties to the agreement, such as funding and staffing responsibility, liability, ownership, right of way, utilities, maintenance, etc. On special funded state highway projects, where a local agency provides all of the funding and staffing for a state highway improvement, there may be several cooperative agreements covering different stages of the project, such as preliminary engineering, design, and construction, where Caltrans could either provide project oversight, or do some of the work on a reimbursed basis provided budget authority exists.

Interagency and Intergovernmental Agreements

An Interagency Agreement, which is similar to a Cooperative Agreement, is used between Caltrans and another State agency. An Intergovernmental Agreement is an agreement between Caltrans and another state.

Highway Improvement Agreements

A Highway Improvement Agreement, another agreement similar to a Cooperative Agreement, is entered into between Caltrans and a private entity or developer. However, Caltrans prefers that the local agency agree to sponsor the private developer's project and that, rather than entering into a Highway Improvement Agreement with the private developer, a Cooperative Agreement be entered into with the local agency. A Highway Improvement Agreement is used where that is not possible.

No Cooperative Work Without Agreement

In the absence of a formal executed agreement, Caltrans has no legal authority or obligation to incur expenses on any cooperative work, including work on special funded projects beyond that which it is Caltrans' obligation to provide. Execution of a formal agreement is required prior to incurring any costs or committing any personnel resources.

References

Refer to Chapter 16 of this manual, and the *Cooperative Agreement Manual*, for a discussion on types of agreements, responsibilities, approvals, format, procedures and District obligations. Refer to Chapter 2, Section 5, of this manual for a discussion of requirements for special funded projects.

ARTICLE 4 - Maintenance Agreements

General

Maintenance agreements spell out the responsibility for maintaining facilities constructed on or adjacent to state routes. They also lay out the financial arrangements for assuming this responsibility. These agreements are between the Department and local agencies - never a private company or developer. Occasionally the Department enters into maintenance agreements with other state agencies. Three main types of maintenance agreements are delegated maintenance, electrical, and freeway maintenance.

Timing

Department policy on the timing of maintenance agreements is clearly spelled out in Maintenance Manual Volume 1, Chapter 1, section 17; no new cooperative agreements to maintain local facilities shall be entered in to without prior approval from the Maintenance Program. Cooperative agreements typically include maintenance agreements as attachments. The stipulation that maintenance agreements continue regardless of the expiration of a cooperative agreement is also included in the body of the cooperative agreement, so as to emphasize the perpetuation of maintenance agreement terms regardless of cooperative agreement status.

On state route facilities, the assumption of maintenance responsibilities from a contractor occurs upon completion of a construction contract. Because electrical charges begin to accrue and hardware and other assets begin to deplete immediately upon installation, it is essential that maintenance agreements be finalized well before the advertising of a construction contract. The Department has very little leverage to negotiate with local agencies on approaches-to-cost-sharing after a construction contract is completed without finalizing a maintenance agreement ahead of time.

Cost Sharing

Cost sharing provisions of maintenance agreements typically revolve around the type of facility to be maintained. For railroad structures the Engineering Services Center, Office of Railroad Agreements typically negotiates the terms of the maintenance agreement. For electrical facilities (signals and lights) on conventional highways at intersections with local streets or roads, the costs should be shared in the same ratio as the number of legs in the intersection under each jurisdiction bears to the total number of legs. The same concept applies to interchanges involving freeway facilities and local streets and roads, except participation is based on the ratio of the number of legs of the respective agencies in relation to the total number of legs of the interchange facility.

APPROVAL Approval is needed from the Maintenance Program prior to maintenance agreement execution. This authority has been delegated from the Maintenance Program Manager to District Division Chiefs, Maintenance. A review by the Sacramento Legal specialist in maintenance agreements is required if the pre-approved format for maintenance agreements is not used (see website address in **REFERENCE** section, below). While often times the responsibility of signing a maintenance agreement is delegated to a District Maintenance Engineer, approval cannot take place without cursory review by the Department's Maintenance Agreements Coordinator, HQ Maintenance Program.

References

General information regarding maintenance agreements can be found in the Department's Maintenance Manual Vol. 1, Chapter 1, sections 16 and 20.

Samples of each of the three basic types of maintenance agreements are available via internet through the Caltrans Maintenance website:

<http://onramp.dot.ca.gov/hq/maint/obpp/obpp.htm>.

They are available as WORD documents or Adobe Acrobat portable documents.

For details on electrical maintenance agreements or railroad maintenance agreements contact the HQ electrical maintenance staff or the ESC Office of RR Agreements in Sacramento.

Maintenance Manual, Vol. 1, Chapter K, page K-24, and the figures on page K-27 through K-29 should be used to examine the cost distributions of electrical maintenance agreements.

ARTICLE 5 - Route Adoptions

CTC Action

Adoption of route locations requires action by the California Transportation Commission (CTC) before a project on the new location can proceed. Route adoptions are needed to:

- Establish the location of an unconstructed route
- Change the location of an existing route to a new alignment including such conditions as:
 - Relocate an alignment adjacent to an existing route if the existing route is to be relinquished to the local agency

- Improve an existing highway to current standards if no route adoption exists (such as occurs when a former county road is added to the State highway system by the Legislature)
- Designate an existing local road as a traversable highway (this probably involves a review of standards rather than a project)
- Transfer the location of a traversable highway to a different local road (this probably involves a review of standards rather than a project)
- Convert a conventional highway to a freeway or an expressway (this is a freeway declaration or a controlled access highway declaration)
- Temporarily connect a new alignment to an existing highway when construction is staged

Approval

The CTC's route adoption occurs at a regularly scheduled CTC meeting following a district's request to place the items on the CTC meeting agenda. A route adoption is normally a routine action if there is community support, but if there is considerable controversy, the CTC may schedule and hold a separate public hearing prior to taking any action. When a project requires FHWA's NEPA approval, the appropriate documents are submitted to FHWA following the CTC action. Route adoption of a freeway or expressway requires a subsequent Freeway (or Controlled Access Highway) Agreement with the affected local agency as discussed in Article 5 of this chapter.

References

Chapter 23 provides circumstances and procedures for CTC route adoption.

ARTICLE 6 - Freeway and Controlled Access Highway Agreements

Agreement Required to Close Local Roads

An agreement between Caltrans and the local jurisdiction authorizing a local street or road closure is required before a city street or county road can be closed by the construction of a freeway or expressway project. This is accomplished with either a Freeway Agreement or a Controlled Access Highway Agreement, which is the term used for expressways. A Freeway Agreement (or Controlled Access Highway Agreement) normally covers the entire freeway (or expressway) facility, or a large segment thereof, within the local jurisdiction. A controlled access highway is subject to all of the requirements concerning agreements that pertain to freeways.

New Connection Requires Revised Agreement

CTC consent is required before a local public road can be connected to a freeway or expressway, as discussed in Article 8. If the new public road connection is approved, the existing Freeway or Controlled Access Highway Agreement needs to be superseded with a new agreement that shows the new connection.

Local Roads to be Relinquished

Typically, a Freeway (or Controlled Access Highway) Agreement provides for the relinquishment of local roads improved or constructed as part of a project. These facilities should be indicated on the exhibit map. The agreement serves as the basis for the subsequent request for CTC relinquishment action following construction, as discussed in Article 6.

Maintenance Agreements are Separate

Freeway (or Controlled Access Highway) Agreements are used as the basis for establishment of Maintenance Agreements with local agencies. However, freeway agreements are not to be used as Maintenance Agreements. Instructions on Maintenance Agreements are issued by the Maintenance Program.

References

Chapter 24 of this manual discusses Freeway and Controlled Access Highway Agreement requirements. Also refer to related Chapter 27, "New Public Road Connections to Freeways", Chapter 25, "Relinquishments", and Streets and Highways Code Sections 23.5 and 100.2.

ARTICLE 7 - Relinquishments

CTC Resolution

The relinquishment of a state highway (or roads and streets built in conjunction with a state highway) to a local agency is accomplished by a CTC resolution. This resolution is requested following construction of a project, after work on the facility to be relinquished is completed and the facility is no longer needed for state highway purposes.

The Caltrans district must submit information through the Right of Way Engineering function for the CTC to relinquish to the county or city the portion of a superseded State highway within the county or city. The information is prepared four months in advance of completion of construction to accommodate a ninety day notice period to allow the local agency to state reasons and objections that the highway is not in a "state of good repair". Caltrans is obligated to place the facility in a state of good repair before

relinquishment. The scope of work and cost of the repair work should be included in the Project Report and in the project approval of the project to construct the new highway.

When Relinquishment is Needed

Caltrans initiates relinquishment action by the CTC when:

- a route is superseded by relocation,
- a route is deleted from the State Highway System by legislative enactment, or
- new construction or improvements to the local road system (collateral facilities) are made by Caltrans in connection with a State highway project.

Agreement or Resolution

Relinquishments of collateral facilities are made in accordance with an agreement with or resolution by the local agency's governing body. The Freeway Agreement (or Controlled Access Highway Agreement), discussed in Article 5, often is used for this purpose.

References

Chapter 25, "Relinquishments", contains the details of the relinquishment process.

ARTICLE 8 - Disposal of Rights of Way

Request to Decertify R/W

A project may involve the disposal of existing operating right of way. District Directors have the approval authority to decertify and dispose of rights of way on operating facilities; this may include land, access rights, or both. The PE from the responsible unit prepares the request to decertify right of way for the District Director's approval. Since right of way information is required, the PE must coordinate the preparation of the request with the Right of Way Branch. Where there has been federal funding of right of way or construction, the FHWA must approve the disposal of right of way.

References

See Chapter 26 of this manual for information needed for requests for approval to decertify and dispose of rights of way on operating facilities. Also see related material in Chapter 24, "Freeway Agreements", and Chapter 27, "New Public Road Connections to Freeways".

ARTICLE 9 - New Public Road Connections

CTC Consent

CTC consent is required prior to providing a new public road connection to a freeway or an expressway. This requirement applies after a freeway or expressway is initially constructed. It may also apply to the initial construction, if the road to be connected did not exist at that time of the freeway or controlled access highway adoption, or if the connection is not shown on the current Freeway or Controlled Access Highway Agreement. Some proposals for access openings to expressways may not be considered to be a public road connection and may involve the procedures to dispose of operating right of way as discussed in Article 7.

New or Revised Interchanges

Related to CTC approval of new public road connections is the conceptual approval of new or revised interchanges. Revised interchanges may or may not be considered new public road connections. If a new or revised interchange is on the Interstate System, FHWA conceptual approval is required prior to approval of the project initiation document.

Requires Revising Agreements

The existing Freeway or Controlled Access Highway Agreement must be revised to show CTC approved new connections of city streets or county roads or highways and other revised interchanges, as discussed in Article 5.

References

Procedures relating to new public road connections to freeways and expressways, and for new or revised interchanges, are discussed in Chapter 27. Also see Chapter 24, "Freeway Agreements", for additional information.

ARTICLE 10 - Resolutions of Necessity for Condemnation

Property Acquisition

Caltrans strives to acquire property by purchase, rather than by condemnation. Providing sufficient lead-time in the project development process for negotiations to take place results in fewer situations where it is necessary to invoke the power of eminent domain to condemn the property. The condemnation process is time consuming and can delay projects. Eminent domain should normally be used as a last resort. Only a small percentage of acquisitions should be by the use of the power of eminent domain.

Condemnation Requires Resolution of Necessity

The California Constitution provides that private property may be taken or damaged for public use only when just compensation has first been paid to the owner. Condemnation of private property by the power of eminent domain must follow prescribed rules. When Caltrans and a property owner are unable to reach agreement on acquisition of a needed property, the condemnation process is initiated by the CTC passing a Resolution of Necessity (RON). The RON provides the legal findings necessary for Caltrans to file suit.

CTC Appearance by Property Owner

A property owner whose property is to be considered for a RON has the right to appear before the CTC to contest the RON on grounds related to the need for the project and for acquiring the property - but not on compensation issues. An Appearance Information Sheet (AIS) is used to inform the CTC of the facts leading to the RON appearance and to document the property owner's concerns.

Reviews

In order to fully consider the concerns of property owners who request an appearance before the CTC, a detailed procedure, known as a First Level Review and a Second Level Review, and involving a Condemnation Review Panel, is used to determine whether to proceed with the condemnation.

References

Information on the process used for a RON when an appearance is requested is discussed in Chapter 28.